



October 30, 2001

Mr. Craig H. Smith  
Deputy General Counsel  
Texas Workers' Compensation Commission  
4000 South IH-35  
Austin, Texas 78704-7491

OR2001-4966

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154053.

The Texas Workers' Compensation Commission (the "commission") received two requests for a specific investigation. You state that you have released some of the responsive information. You also state that a portion of the investigative file was addressed by this office in Open Records Letter No. 2001-3198 (2001). You explain that the investigative file, Attachment D, has grown considerably since the previous ruling was issued, and you now seek a determination that the additional information is also excepted from disclosure under sections 552.101, 552.108, 552.111, and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 402.092 of the Labor Code provides that information maintained in the investigative files of the commission is confidential and may not be disclosed except in four limited circumstances, none of which apply here. Labor Code § 402.092(a). "Investigative file" is defined as "any information compiled or maintained by the commission with respect to a commission investigation authorized by law." *Id.* § 402.092(d). Section 414.005 of the Labor Code provides that the commission's Compliance and Practices Division shall maintain an investigation unit for the purpose of conducting investigations relating to alleged violations of the Texas Workers' Compensation Act (the "Act") and commission administrative rules. *See* Labor Code § 414.005; *see also* §§ 414.001, .002.

You state that the commission received a complaint that confidential information was posted on its website. You explain that, in response to this complaint, the commission initiated a joint Internal Audit/Compliance and Practices Division investigation to determine whether violations of sections 402.083 and 402.091 of the Labor Code had indeed occurred. We note that section 402.092 does not usually shield from public scrutiny the misconduct of a public employee. However, in this instance, the internal investigation is exceptional because it was developed by the commission in the course of discharging its duties under the Act. *See* Labor Code §§ 402.083, .091. Accordingly, we conclude that Attachment D is confidential under section 402.092(a) of the Labor Code and must, therefore, be withheld from disclosure pursuant to section 552.101 of the Government Code.<sup>1</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

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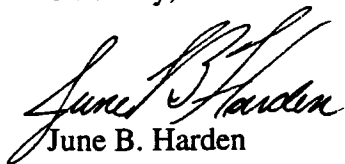
<sup>1</sup>Because we are able to make a determination under section 552.101, we need not address your additional arguments against disclosure.

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/seg

Ref: ID# 154053

Enc: Submitted documents

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